

IN THE UNITED STATES COAST GUARD
COURT OF CRIMINAL APPEALS

Gary M. TUSCAN
Fireman Machinery Technician (E-3),
Petitioner

v.

United States,
Respondent

23 November 2007

PETITION FOR EXTRAORDINARY
RELIEF FILED 2 NOVEMBER 2007

MISC. DOCKET NO. 002-08

ORDER – PANEL SIX

On 16 November 2007, Respondent filed its Answer to the Court's Order to Show Cause with a Motion to Attach the statement of CDR Daniel Spagone, USN, Executive Officer, Naval Consolidated Brig (NAVCONBRIG), Charleston, South Carolina, dated 14 November 2007. Respondent apparently became aware of a document regarding the investigation of Petitioner's complaint by NAVCONBRIG Charleston, and the next day filed a Motion to Attach the Report of Investigation memo, dated 26 October 2007, from NAVCONBRIG Charleston Command Investigations to the Commanding Officer.

Petitioner filed his reply on 21 November 2007 with a Motion to Attach Appendix C, which consists of a statement of Gary M. Tuscan dated 16 November 2007; a Request for Interview (DD Form 510) with attached statement dated 6 October 2007; a letter from Gary M. Tuscan to LT Robert M. Pirone, USCG, dated 12 November 2007; a Report of Investigation memo dated 26 October 2007; and a letter from Gary M. Tuscan to LT Pirone dated 1 November 2007.

It is undisputed that Petitioner has not filed a complaint under Article 138, UCMJ. Seeing no justification to relieve Petitioner of the requirement to do so, it is, by the Court, this 23rd day of November 2007,

ORDERED:

That Respondent's and Petitioner's Motions to Attach are hereby granted; that the Petition for Extraordinary Relief is dismissed.



For the Court,

L. I. McClelland
Chief Judge

Copy: Office of Military Justice
Appellate Government Counsel
Appellate Defense Counsel